



Department of
Toxic Substances
Control

*Preventing
environmental
damage from
hazardous waste,
and restoring
contaminated
sites for all
Californians.*



State of California



California
Environmental
Protection Agency

Fact Sheet #10, October 2006

Update on Phase I Environmental Site Assessments for School Sites; All Appropriate Inquiries; ASTM E-1527-05

Introduction

California school districts are required (Education Code, sections 17210, 17210.1 and 17213.1) to prepare a Phase I Environmental Site Assessment (Phase I) and/or Preliminary Environmental Assessment to identify and evaluate recognized environmental conditions (RECs) for proposed new or expanding school properties that will be financed using state bonds. The Education Code requires that Phase Is be prepared in accordance with the American Society for Testing and Materials (ASTM) Standard E-1527, and any regulations promulgated by the Department of Toxic Substances Control (DTSC).

In 2003, DTSC developed regulations (California Code of Regulations, title 22, division 4.5, chapter 51.5 (22 CCR Chapter 51.5, commencing with section 69100) pertaining to preparation of Phase Is at school sites. However, DTSC is currently developing a proposed amendment to these regulations to maintain consistency with changing federal and state laws and standards for Phase Is and “All Appropriate Inquiry.”

Federal and State Liability Protection; “All Appropriate Inquiry”

Federal law (Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA] of 1980, as amended) addresses liability and liability protections for environmental contamination. “All Appropriate Inquiry” (AAI) is the process for evaluating a property’s environmental conditions for the purpose of qualifying for landowner liability protections under CERCLA. On November 1, 2005, the U.S. Environmental Protection Agency (USEPA) published and codified a final rule as Part 312 of Title 40, Code of Federal Regulations (40 CFR Part 312), setting federal standards and practices for the conduct of AAI. The new federal regulations take effect November 1, 2006.

Parties who may potentially claim protection from CERCLA liability may include:

- a) innocent landowners
- b) bona fide prospective purchasers
- c) contiguous property owners
- d) parties receiving USEPA Brownfields Grants to assess/characterize properties

Parties seeking CERCLA liability protection cannot be a “responsible party” for existing contamination, and must undertake “All Appropriate Inquiry” (AAI) into the previous ownership and uses of the property, consistent with federal law. Requirements for liability protection include responsibility for continuing, post-acquisition obligations to control site conditions and take reasonable steps to stop releases of hazardous materials.



The California Land Reuse and Revitalization Act of 2004 (CLRRRA) (AB 389, Montanez) became effective January 1, 2005. Under state law (Health and Safety Code, Division 20, Chapter 6.82 and 6.83), immunity extends to protection from liability for claims made by any person for response costs or other damages associated with a release of hazardous materials. Participants seeking to qualify for immunity must conduct “all appropriate inquiries”, and enter into an agreement with DTSC or the Regional Water Quality Control Board to assess and cleanup the property as necessary. In addition to the federal requirements noted above, California law also requires that subject properties: a) must be located in an urban infill area, that is, a vacant or underutilized property in a populated area; b) may not be listed as state or federal superfund site; and c) may not be underground storage tank site impacted solely by petroleum.

Role of DTSC in Review of Phase I Environmental Assessments

Under the Education Code, DTSC’s review of Phase I Environmental Assessments is conducted solely for the purpose of identifying RECs at prospective school sites in accordance with requirements of the Education Code, to determine whether further investigation is necessary prior to DTSC’s approval of sites for future school use. Therefore, DTSC’s approval of Phase Is pursuant to Education Code section 17213.1(a), does not constitute a determination that “All Appropriate Inquiry” has been conducted within the meaning of CERCLA section 101(35)(B).

Revised ASTM Standard for Phase Is

School districts may initiate the process to qualify for federal or state liability protection by contracting with a qualified environmental professional to prepare and sign a Phase I Environmental Site Assessment prior to purchase of properties. Acceptable practice standards for AAI are defined by new ASTM Standard E1527-05, which will supersede previous versions, effective November 1, 2006. USEPA has determined that Standard E1527-05 is consistent and compliant with the new AAI regulations. The original standard E1527 was drafted in 1990 by ASTM, entitled “Standard Practice for Environmental Site Assessment: Phase I Environmental

Site Assessment Process”. The ASTM was updated and revised in 1993, 1997, 2000 and November 2005.

New or More Stringent ASTM Requirements for Phase Is

The new federal rule and ASTM E1527-05 have added new or more stringent requirements for preparation of Phase Is, some of which are noted as follows:

- 1. Definition of Environmental Professional:** ASTM E1527-05 requires that all Phase Is be prepared by a qualified environmental assessor with at least three years’ experience in preparation of Phase Is, with documentation of education and college degrees. Environmental professionals must sign declarations verifying that they meet required qualifications, that is, that they possess specific education, training and experience for conducting AAI.
- 2. Shelf Life:** Under ASTM E1527-05, certain aspects of the Phase I must be conducted or updated within 180 days of the purchase date of property, including: interviews, cleanup liens, historical and government records, visual inspections of onsite and adjoining properties, changes of site conditions, and declarations of the environmental professional.
- 3. Interviews:** ASTM E1527-05 requires that interviews be conducted of current owners and occupants, and to the extent possible, former owners, occupants or operators, and neighboring property owners, as well as local and state government officials, and persons with site knowledge.
- 4. Historical Research Period:** ASTM E1527-05 requires review of historical records back to first developed use, or 1940, whichever is earlier. Standard historical sources include aerial photos, fire insurance maps, property tax files, recorded land title records, USGS topographic maps, building department records etc.
- 5. Reviews of Environmental Liens, Engineering Controls, and Institutional Controls:** ASTM E1527-05 requires review of reasonably ascertainable recorded land title records (chain of title), lien records, governmental (federal, state, tribal or local) records, and judicial records.

6. Minimum Search Distance for Government Records: ASTM E1527-05 requires identification of the following sites if they are located within ½ mile of the subject property: a) any federal site listed on the National Priority List; b) any site included in the federal CERCLIS list; c) any site included in federal, state and tribal registries for institutional controls/engineering controls; d) any site included in lists of state and tribal voluntary cleanup or brownfields sites. In addition, ASTM Practice E1527-05 requires identification of all storage tanks, whether above-ground or underground.

7. Data Gaps/Failures: ASTM E1527-05 requires that environmental professionals identify data gaps that affect their ability to identify conditions indicative of release or threatened release of hazardous substances related to the subject property, and give their professional opinion about the impact of the data gaps (“degree of obviousness”) in assessing RECs.

8. Alternative Onsite Inspection: ASTM E1527-05 requires that environmental professionals document good faith efforts taken, document sources of information, explain reason and comment on significance if they fail to conduct an onsite inspection.

9. Inspection of Adjoining Properties: ASTM E 1527-05 requires visual inspection of adjoining properties from the subject property line, public right-of-way, or other vantage point (e.g., aerial photography), including visual inspection of areas where hazardous substances may be or may have been stored, treated, handled or disposed.

10. Property Valuation Comparison: ASTM E 1527-05 requires consideration of the relationship of the purchase price to the fair market value of the property.

For More Information

Please see the following websites for additional information:

- U.S. Environmental Protection Agency’s All Appropriate Inquiry Fact Sheets at: www.epa.gov/brownfields/aai/proposed_rule.html.

- DTSC’s Fact Sheet and Presentation on California Land Reuse and Revitalization Act of 2004 (CLRRRA) AB 389 (Montanez) at www.calepa.ca.gov/Brownfields/AB389/FactSheet.pdf
- DTSC’s “Phase I Environmental Site Assessment Advisory: School Property Evaluation,” September 2001, at: www.dtsc.ca.gov/Schools/index/cfm.